

DW 02-126

Pennichuck Water Works, Inc.  
Pennichuck East Utility, Inc.  
Pittsfield Aqueduct Company, Inc.

**Joint Petition for Approval for a Change of Control**

**Order Approving Procedural Schedule**

**O R D E R    N O. 24,020**

**August 9, 2002**

**APPEARANCES:** McLane, Graf, Raulerson & Middleton by Richard A. Samuels, Esq. and Sarah B. Knowlton, Esq. for Joint Petitioners Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc.; David R. Connell, Esq. and Mayor Bernard A. Streeter for the City of Nashua; David LeFevre, Esq. for the Towns of Merrimack, Hudson and Litchfield; Beth Fernald, Esq. for the Town of Amherst; Karen White, Planning Director for the Town of Bedford; Nancy Amato, Selectperson for the Town of Milford; Jim Finch for the Town of Londonderry; Shirley Cohen, Rep. Carolyn Gargas and Rep. Dick Drisko for the Town of Hollis; Mary Ellen Martin, Peyton Hinkle and Michael Balboni for the Pennichuck Watershed Council; Gregory Doppstadt from the Nashua Fish & Game Assn.; Malcolm Lowe for Nashua City Planning Commission; Steve Williams from Nashua Regional Planning Commission; Elizabeth Coughlin, Vice Chairperson, Science, and Tham Saravanapavan, Water Resources Engineer for the Merrimack River Watershed Council; John Harvey, Chairman of the Amherst Conservation Commission; Rep. Roland Lefebvre; Rep. Cynthia J. Dokmo; Rep. Robert Rowe; Rep. Paul Spiess; Rep. Peter Bergin; Rep. Claire McHugh; Barbara Pressly, pro se; Thomas McGreevey, pro se; Robert & Hilary Keating, pro se; Kathy L. Pape, Esq. for Philadelphia Suburban Corporation; Office of Consumer Advocate by Michael W. Holmes, Consumer Advocate; and Marcia A. B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY AND BACKGROUND**

On June 17, 2002, Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility, Inc. (PEU) and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, Petitioners), filed with the

New Hampshire Public Utilities Commission (Commission) a Petition for Approval of the Acquisition of Pennichuck Corporation (the parent corporation of PWW, PEU and PAC) by Philadelphia Suburban Corporation (PSC). The merger between a PSC subsidiary, Raleigh Acquisition Corporation (RAC), and Pennichuck Corporation would effect this acquisition. The Petition was filed together with the pre-filed testimony of Maurice L. Arel, the President and Chief Executive Officer of Pennichuck Corporation, and of David P. Smeltzer, Senior Vice President and Chief Financial Officer of Philadelphia Suburban Corporation. Included in Mr. Arel's testimony was a copy of an "Agreement and Plan of Merger", dated April 29, 2002, among Pennichuck Corporation, PSC and RAC.

PWW serves approximately 21,993 customers in the City of Nashua and the Towns of Amherst, Hollis, Merrimack and Milford. PWW also owns and operates eleven community water systems in Bedford, East Derry, Milford, Newmarket, Plaistow and Salem. PEU serves approximately 4,240 customers in the Towns of Atkinson, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown and Windham. PAC serves approximately 633 customers in the Town of Pittsfield.

The Petitioners represent that Commission jurisdiction over the Petitioners' operations, post-acquisition, would remain

unchanged and would have no impact on any Commission Orders pertaining to PWW, PEU or PAC. The Petitioners further assert that the acquisition described in the petition will have no adverse effect on rates, terms, conditions or operations of PWW, PEU or PAC.

The Commission issued an Order of Notice on June 27, 2002, ordering a Prehearing Conference for July 19, 2002, to be immediately followed by a Technical Session between the Petitioners, Staff, Office of the Consumer Advocate (OCA) and any Intervenors. At the July 19, 2002 Prehearing Conference, several Petitions for Intervention were granted by the Commission.

At the technical session, the parties, Staff and the OCA discussed a procedural schedule and issues of notice. On July 22, 2002, Staff filed with the Commission the following proposed procedural schedule:

Immediately	Commencement of Rolling Data Requests from Staff/OCA/Intervenors
Responses	Due from Petitioners/PSC within 2 weeks from date of Request
8/21/02	Technical Session # 1 (at NHPUC)
9/13/02	Last set of Data Requests from Staff/OCA/Intervenors
9/27/02	Last set of Responses due from Petitioners/PSC
10/10/02	Technical Session # 2 (at NHPUC)
10/24/02	Responses to Technical Session Data Requests due from Petitioners/PSC
12/10/02	Testimony Due from Staff/OCA/Intervenors

12/20/02	Data Requests due from Petitioners/PSC to Staff/OCA/Intervenors
1/02/03	Responses to Data Requests due from Staff/OCA/Intervenors
1/08/03	Technical Session/Settlement Conference (at NHPUC)
1/22/03	Rebuttal Testimony due from Petitioners/PSC
1/29/03	Data Requests due from Staff/OCA/Intervenors
2/05/03	Responses to Data Requests due from Petitioners/PSC
2/17/03 -	
2/19/03	Hearing on Transaction
2/28/03	Order Issued

Staff also reported that the Petitioners, Staff, OCA and Intervenors discussed appropriate avenues for noticing this docket beyond the requirements outlined in the Order of Notice. The Staff, OCA, and parties agreed that the Petitioners should immediately send a mailing to the town managers of each municipality within Pennichuck's service territory who have not already intervened. That mailing would include a copy of the Order of Notice as well as a cover letter explaining that the municipalities still had opportunity to submit to the Commission a Petition for Intervention as well as a request for an evening Commission Meeting to be held within that municipality.

Staff further represented in their letter that the Staff and parties request the Commission issue a press release announcing the procedural schedule and that the schedule be placed on the Commission's web site.

On July 24, 2002, the Pennichuck Watershed Council (PW Council) filed a Motion to extend the procedural schedule. PW Council specifically requested: two additional weeks be placed on the front end of the schedule to allow time to define questions; and two months be placed within the question and answer portion of the schedule to provide time to analyze data and clarify questions.

On August 2, 2002, Staff filed an Objection to PW Council's motion. Staff averred the extension sought by PW Council would extend the procedural schedule through the second full week in May, 2003. Staff averred it would be imprudent for the Commission to extend the procedural schedule beyond the March 31, 2003 termination date provided in Article VII, Termination, Agreement and Plan of Merger, dated April 29, 2002. Staff further stated the procedural schedule provides numerous opportunities to question Pennichuck Water Works, Inc. and Philadelphia Suburban Corporation.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Petitioners**

The Petitioners briefly described the filing and indicated that they would propose an extended time frame for a procedural schedule rather than seek an order within 60 days as provided in RSA 369:8,II(b).

**B. Office of the Consumer Advocate**

The OCA expressed concern that the proposed acquisition may not occur due to the recent decline in PSC's stock price. The OCA indicated that it was looking for assurances from both the Petitioners and its shareholders concerning the willingness of each to continue towards consummating the agreement.

**C. Staff**

The Staff took no initial position with respect to the filing but indicated that it would be conducting a thorough review of all issues. Staff also requested that the Petitioners provide assurances regarding its continued desire to consummate the proposed agreement.

**D. City of Nashua**

The City of Nashua indicated that it was beginning its analysis of the proposed acquisition and was therefore not yet able to take a position regarding it. The City of Nashua requested the Commission allow an appropriate length of time for it to complete its due diligence analysis of the acquisition.

**E. State Representative Roland J. Lefebvre**

Representative Lefebvre expressed concern over alleged deception regarding Pennichuck Corporation's past purchase and

subsequent resale of watershed property within the City of Nashua.

**F. Merrimack River Watershed Council**

The Merrimack River Watershed Council (MRWC) indicated that it was concerned with the impact that the proposed acquisition would have on the Merrimack River watershed and would be seeking information with regard to PSC's watershed resource management policies. The MRWC also expressed concern regarding the potential for bottled water production.

**G. Town of Bedford**

The Town of Bedford expressed concern that it had received no formal communication from the Petitioners regarding the proposed transaction. The Town of Bedford requested a period not to exceed six months in order to investigate the proposed merger.

**H. Amherst Conservation Commission**

The Amherst Conservation Commission indicated that a significant portion of the Pennichuck surface watershed lies in the Town of Amherst. It requested that an appropriate amount of time be allotted by the Commission in order to adequately assess the impact of the proposed transaction on the watershed.

**I. State Representative Claire B. McHugh**

Representative McHugh indicated concern regarding the perceived lack of communication on the part of the Petitioners with regard to this transaction. She also expressed concern regarding the consequences that the proposed transaction would have on customer rates. She urged that in addition to public hearings, the Commission also consider making its deliberations regarding this matter open to the public.

**J. Town of Hollis**

The Town of Hollis expressed concern with regards to the potential overtaxing of the watershed and the potential impact that this transaction will have on the Hollis aquifers. The Town of Hollis urged that adequate time be allowed to study the affect of the proposed acquisition on Hollis and other communities.

**K. Barbara Pressly**

Ms. Pressly complained regarding the notification process, which she felt was inadequate to give communities adequate opportunity to participate. Ms. Pressly urged the extension of the notification process in this docket.

**L. Pennichuck Watershed Council**

The Pennichuck Watershed Council (PW Council) stated that it has many questions pertaining to the public good that



will result from the proposed transaction. The PW Council also indicated that it would ultimately be looking for assurance that the interests of all citizens would be paramount.

**M. Nashua City Planning Board**

The Nashua City Planning Board stated that there are several issues that need to be addressed, especially those regarding North American Free Trade Agreement (NAFTA), interstate commerce, the state statutes, and local ordinances.

**N. Nashua Fish and Game Association**

The Nashua Fish and Game Association (NFGA) stated that historically it has had an amicable working relationship with the management of Pennichuck Corporation but has concern that this relationship would be harmed when the property transfers to PSC. NFGA expressed its opposition to any sale of the Pennichuck properties to an out-of-state entity.

**O. Nashua Regional Planning Commission**

The Nashua Regional Planning Commission (NRPC) stated its concern with regard to capital investment issues related to the proposed transaction. The NRPC also expressed support for the City of Nashua's request that an adequate amount of time be allowed in order to perform a due diligence analysis of the transaction.

**P. State Representative Robert Rowe**

Representative Rowe, speaking on behalf of three other State Representatives from the Town of Amherst, expressed his concern regarding the long-term effect that this transaction may have on the aquifer that serves Amherst and the resultant effect on service.

**Q. Town of Amherst**

The Town of Amherst stated a significant portion of the Pennichuck surface watershed lies in the Town of Amherst and that water from several Pennichuck wells in Amherst supplies the system. The Town expressed its concern that the proposed acquisition might affect future use as well as the Town's interests in conserving these water resources.

**R. Philadelphia Suburban Corporation**

Philadelphia Suburban Corporation stated the proposed merger and acquisition agreement brings substantial benefits to the public. The filing supports that determination. PSC intends to fully answer discovery directed to them.

### III. COMMISSION ANALYSIS

#### A. Intervention Requests

The Commission has received numerous petitions for Intervention, both prior to and subsequent to the prehearing conference. The individuals and entities requesting intervention are as follows:

Philadelphia Suburban Corporation  
Robert and Hilary Keating  
Town of Hollis  
Town of Hudson  
Town of Merrimack  
Town of Litchfield  
Town of Milford  
City of Nashua  
Pennichuck Watershed Council  
Barbara Pressly  
Thomas McGreevy  
Town of Bedford  
Town of Amherst  
Nashua Fish and Game Association  
Nashua Regional Planning Commission  
Amherst Conservation Commission  
Willard Flagg  
City of Nashua Planning Board  
Town of Londonderry  
State Representative Robert Rowe  
State Representative Cynthia J. Dokmo  
State Representative Paul Spiess  
State Representative Peter Bergin  
Merrimack River Watershed Council  
State Representative Claire B. McHugh  
Nashua Conservation Commission  
State Representative Roland J. Lefebvre  
Peggy Miller  
Town of Pittsfield

Each individual and entity asserted that their rights, duties, privileges, and substantial interests would be impacted by this proceeding. The Commission received no objections to these interventions at the prehearing conference and has not received any as of the date of this order. We find these interventions satisfy the requirements of RSA 541-A:32 and we approve the interventions. We reiterate our request to the parties that they consolidate representation among one another, if possible, to facilitate representation in these proceedings. Should circumstances change and the orderly conduct of these proceedings be jeopardized, we may require adoption of measures for the efficient administration of the proceeding pursuant to RSA 541-A:32,III.

**B. Procedural Schedule and Motion to Extend Time**

We acknowledge the difficulties presented in multi-party litigation when creating an acceptable procedural schedule. We commend the Staff for crafting a procedural schedule to accommodate the interests of numerous parties.

For instance, we heard many requests at the prehearing conference to delay the procedural schedule, in one instance, until consultant reports could be obtained. In contrast, the Petitioners indicated their preference for a 60-day review time period as cited in RSA 369:8,II(b), but indicated they would

abide by a procedural schedule that extended somewhat beyond 60 days. After the prehearing conference, we received a motion to extend the procedural schedule by a total of two and one-half months.

The proposed procedural schedule set forth in Staff's July 22, 2002 letter extends until mid-February 2003. This is beyond the 60-day review time contained in RSA 369:8(II)(b) and cited by the Petitioners in their Petition. The Commission has previously held in *Acquisition of ENGI by Eastern Enterprises and KeySpan Corporation*, 84 NH PUC 678, 679 (1999) that in certain instances it is necessary to perform more of a review than is detailed in RSA 369:8 alone. Since the Petitioners have assented to this proposed procedural schedule, however, we need not delve into that analysis here.

We are not persuaded that the additional time required by Pennichuck Watershed Council is necessary. We do believe, however, the discovery schedule can be adjusted in a way that provides greater time for discovery at the beginning of the case, and gives intervenors greater time to respond to data requests on their prefiled testimony. Toward that end, we have revised the schedule to allow for two series of rolling date requests to the Petitioners and PSC.

Immediately	Commencement of Rolling Data Requests from Staff/OCA/Intervenors
Responses	Due from Petitioners/PSC within 2 weeks from date of Request
8/21/02	Technical Session # 1 (at NHPUC, 9 AM)
9/13/02	Last date for Initial Data Requests from Staff/OCA/Intervenors
9/27/02	Last date for Responses to Initial Data Requests to the Petitioners/PSC
10/10/02	Technical Session # 2 (at NHPUC, 9 AM) and Last date for Final Data Requests
10/24/02	Responses to Technical Session and Final Data Requests due from Petitioners/PSC
12/10/02	Testimony Due from Staff/OCA/Intervenors
12/20/02	Data Requests due on testimony of Staff/OCA/Intervenors
1/08/03	Responses to Data Requests due from Staff/OCA/Intervenors
1/15/03	Technical Session/Settlement Conference (at NHPUC, 9 AM)
1/22/03	Rebuttal Testimony due from Petitioners/PSC
1/29/03	Data Requests due from Staff/OCA/Intervenors
2/05/03	Responses to Data Requests due from Petitioners/PSC
2/17/03 - 2/19/03	Hearing on Transaction (begin at 10 AM)
2/28/03	Target Date for Issuance of Final Order

We find the proposed procedural schedule, as revised, reasonable and believe it will aid in the orderly review of the Petitioner's filing. We will approve the revised procedural schedule for the duration of the proceeding.

### **C. Additional Notice**

The Commission commends the Petitioners on responding to intervenor concerns about inadequate notice to municipalities in the service territory. In their letter to

the Commission dated July 22, 2002, Staff informed the Commission of the Petitioner's plans for additional notification. We note that the Petitioners promptly mailed letters to the affected municipalities on July 23, 2002.

**D. Evening Hearings**

The Commission acknowledges Staff and the parties' request for evening hearings prior to October 10, 2002. Due to the Commission's active schedule in September it will not be feasible to conduct evening hearings in each of the affected municipalities. We are presently investigating locations and available meeting space. We will notify the parties shortly regarding meeting specifics and will place the information on the Commission's web site. In addition, display ads will be placed in local papers prior to each evening hearing.

The intent of these evening hearings will be to receive public comment and understand public concerns in this docket. The Commission's scope of review in these proceedings is outlined in RSA 369:8; RSA 374:4; and RSA 374:33. The Commission is responsible for determining whether the transaction will have any "adverse effect on rates, terms, service, or operation of the utility within the state." RSA 369:8,II(b)(1). The Commission is responsible for determining whether the acquisition of Pennichuck Corporation by

Philadelphia Suburban Corporation is "lawful, proper, and in the public interest." RSA 374:33. The Commission is also charged with reviewing the management of the utility and whether the utility will continue to be operated in a safe manner and provide adequate service to customers. The Commission expects public comments at these meetings will be helpful if they relate to the Commission's authorized scope of review.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the revised procedural schedule set forth above is APPROVED and shall govern the remainder of this proceeding; and it is

**FURTHER ORDERED**, that all technical sessions and settlement discussions contained in the procedural schedule will begin at 9 AM and hearings shall be begin at 10 AM at the Commission; and it is

**FURTHER ORDERED**, that Pennichuck Watershed Council's motion to extend time is DENIED; and it is

**FURTHER ORDERED**, that all Petitions to Intervene as noted above are GRANTED.



By order of the Public Utilities Commission of New  
Hampshire this ninth day of August, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Michelle A. Caraway  
Assistant Executive Director